Supreme Court, U.S.
FILED
AUG 5 2003

No. 03 ~~382~~ 832

In The
Supreme Court of the United States

Karl A. White,

Petitioner.

v.

American Habilitation Services, Inc.,

Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The
Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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29 pp

QUESTIONS PRESENTED

This is an employment discrimination case under the Americans with Disabilities Act ("ADA"). Petitioner Karl A. White is a hearing-impaired person, who was employed with Respondent American Habilitation Services, Inc. ("AHS"). During his employment, he was demoted because of his disability and his requests for reasonable accommodations. He was later terminated in retaliation for requesting reasonable accommodations for his disability and because he filed a charge of discrimination with the Texas Commission on Human Rights. The questions presented are:

1. Whether the court erred in granting Respondent AHS summary judgment on Petitioner White's discriminatory demotion claim on the grounds that he failed to make a *prima facie* case of discrimination by supposedly adducing no evidence that he was qualified for his job or that he was demoted from his managerial position because of his disability or his requests for reasonable accommodations.

2. Whether the court erred in granting Respondent AHS summary judgment on Petitioner White's retaliatory termination claim on the grounds that he failed to make a *prima facie* case of retaliation by supposedly adducing no evidence establishing a causal link between his termination and his requests for reasonable accommodations for his hearing impairment and/or the filing of his charge of discrimination with the Texas Commission on Human Rights.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner White, a hearing-impaired former employee of Respondent American Habilitation Services, Inc. ("AHS"), respectfully prays that a writ of certiorari be issued to review the decision of the Court of Appeals for the Fifth Circuit. The decision plainly misapplied the standard for summary judgment and thereby deprived Petitioner of his right to try his claims of disability discrimination and unlawful retaliation to a jury.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is unpublished and is reprinted in the Appendix at 1a. The decision of the United States District Court for the Western District Texas, Austin Division, is unpublished and is reprinted in the Appendix at 9a.

JURISDICTION

The court of appeals entered judgment on May 14, 2003. This Court has jurisdiction under the American with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* and 28 U.S.C. 1254.

STATUTES INVOLVED

The Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.* provides in relevant part:

42 USC 12112:

> (a) General Rule. No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
>
> (b) Construction. As used in subsection (a), the term discriminate includes
>
> (5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
>
> (B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant[.]

42 USC 12203:

> (a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

STATEMENT OF THE CASE

A. Factual Background

Petitioner White is an African-American male and is hearing-impaired. Respondent AHS provides daily living assistance in group homes for individuals with mental and physical disabilities. Petitioner White began working at Respondent AHS in Austin on July 21, 2000 as a Residential Manager. His responsibilities as Residential Manager included, among other things, supervising direct care staff and staffing the group home.

Throughout his employment with Respondent AHS, Petitioner White repeatedly asked for reasonable accommodations for his hearing impairment. For instance, he asked Respondent AHS to provide interpreters for important staff meetings and training sessions to enable him to understand what was being said and to communicate the information to his subordinates. Respondent AHS consistently refused to provide Petitioner White with this relatively simple accommodation. Petitioner White also requested reasonable accommodations for his staff members. For instance, on behalf of one of his deaf-impaired staff members, Andy Scofield, Petitioner White

requested that Respondent AHS install a text telephone to enable Mr. Scofield to communicate in case of an emergency involving a resident of the home he managed. Petitioner White also requested that Respondent AHS provide interpreters for training classes. When Respondent AHS refused to do so, he was forced to interpret for his hearing impaired staff, making it extremely difficult for him to benefit from the training.

These repeated requests for obligatory reasonable accommodations rankled Petitioner White's supervisors. They almost immediately began to concoct a reason to terminate or demote him. On September 8, 2000, they claimed that Petitioner White was "on-call" and "refused" to leave his second job to come in to work to assist with a staff shortage. This was a false allegation. Petitioner White was not "on-call" that day and had specifically been told that by his supervisor that very morning.

Notwithstanding the falsity of the accusations, Respondent AHS suspended Petitioner White. He was subsequently told that in lieu of termination, he would be demoted from his managerial position to a direct care position at one of Respondent AHS's group homes.

Within days of being informed of his discipline, Petitioner White filed an charge of discrimination with the Texas Commission on Human Rights ("TCHR"). Within a little more than one week of filing his complaint with the TCHR, Petitioner White was terminated.

B. The Decisions Below

The United States District Court for the Western District of Texas granted Respondent AHS summary judgment. The Court of Appeals for the Fifth Circuit affirmed the district court's decision. Both courts concluded that Petitioner White failed to establish prima facie cases for disability discrimination and retaliation. Specifically, the Court of Appeals concluded that:

1. White has failed to make a prima facie case of discrimination in relation to his demotion. In particular, White has shown no evidence that he was qualified for the job or that he was demoted from his managerial position because of his disability. On the contrary, the uncontradicted evidence shows that he was demoted because he was unwilling to perform the on-call duties of his position. Thus, the record supports only one conclusion: AHS demoted White because his second job, not his disability, rendered him unable to function as a manager. Appendix at p. 6a.

2. [W]e find no evidence in the record, and White has identified none beyond his self-serving "gut feelings," supporting even an inference of a causal link between his accommodation requests and his termination. The only evidence linking the two is the uncontroverted fact that AHS acceded to White's demand that it install a TTY machine equipped with a flashing light. This evidence supports only an inference in support of AHS's position. Viewed in the light most favorable to White, we conclude that no evidence shows that AHS's decision to discharge White was based in any part on his accommodation requests. Appendix at p.7a .

REASONS FOR GRANTING THE WRIT

The courts below failed to consider key evidence that created genuine issues of material fact regarding Petitioner White's disability discrimination claim and unlawful retaliation claim.

The courts below misapprehended the nature of Petitioner White's claims and therefore ignored material evidence. As the holding of the court of appeals set forth above indicates, the court failed to construe Petitioner White's claim regarding his demotion as a claim for unlawful retaliation based on the repeated requests he made on behalf of himself and others for reasonable accommodations. There was ample evidence in the record of these requests, which came just prior to Petitioner White's suspension and demotion. A reasonable juror could conclude that the close proximity in time between Petitioner White's repeated requests and his demotion established a causal connection. The courts below, however, completely ignored this evidence because they did not consider Petitioner White's demotion claim as a claim for unlawful retaliation.

Similarly, the courts below ignored material evidence establishing a causal connection between Petitioner White's protected activities and his termination. Petitioner White was terminated within a little more than a week after filing his administrative charge of discrimination with the Texas Commission on Human Rights. As the holding of the court of appeals set forth above indicates, the court completely ignored this compelling evidence of a causal connection. Courts routinely hold that close temporal proximity between a protected activity and an adverse employment action can be sufficient – in and of itself – to establish the necessary causal nexus in retaliation cases. *See, e.g., Gupta v. Florida Board of Regents*, 212 F.3d 571, 589-90 (11th Cir. 2000), *cert. denied*, 522 U.S. 1045, 118 S.Ct. 685, 139 L.Ed.2d 632 (1998)); *Dey v. Colt Constr.& Dev. Co.* 28 F.3d 1446, 1458 (7th Cir. 1994); *George v. GTE Directories Corp.*195 F.R.D. 696 (M.D. Fla. 2000). The courts below erred in not even considering this evidence.

CONCLUSION

The courts below misconstrued the fundamental nature of Petitioner White's claims and therefore misapplied well-established summary judgment standards. As a result, Petitioner White was denied his right to have his claims heard and determined by a jury. Petitioner originally filed this lawsuit to vindicate his rights, as well as the rights of all productive and qualified hearing-impaired people, under the Americans with Disabilities Act. All Petitioner White requested was to have his day in court and to present his case to a jury. If the lower courts' decisions are allowed to stand, he will have been unfairly denied of that right. Respectfully, the petition for a writ of certiorari to review the decision of the Court of Appeals for the Fifth Circuit should be granted.

Respectfully Submitted,

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Date: November 24, 2003